Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
Petition of Qwest Corporation for	)	WC Docket No. 04-416
Forbearance Pursuant to 47 U.S.C. § 160(c)	)	
Pertaining to Qwest's xDSL Services	)	

Comments
Of
<u>The Nebraska Rural Independent Companies</u>

I. Introduction

The Nebraska Rural Independent Companies (the "Nebraska Companies")[1] hereby submit comments in the above captioned proceeding. With this Public Notice[2] the Federal Communications Commission (the "Commission") seeks comment on a petition (the "Petition")[3] filed by Qwest Corporation ("Qwest") for forbearance from dominant carrier tariff regulation (in particular, 15-day tariff notices, the cost support requirement, the required delays between price changes), rate averaging requirements, and resale at an avoided-cost discount, for Qwest's mass-market Digital Subscriber Line ("DSL") services.[4] Although Qwest identifies two proceedings

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[1] Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K&M Telephone Company, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

[2] *See* Public Notice, Comments Invited on Petition for Forbearance Filed by Qwest Corporation Regarding Qwest's DSL Service, WC Docket No. 04-416, (rel. Nov. 16, 2004).

[3] *See Petition of Qwest Corporation. for Forbearance Pursuant to 47 U.S.C. § 160(c) Pertaining to Qwest's xDSL Services,* WC Docket No. 04-416, Petition for Forbearance (*"Qwest Petition"*) (filed November 10, 2004).

[4] Id. at p. 3.

that could potentially deregulate incumbent local exchange carrier ("ILEC") xDSL services,[5] as well as a forbearance petition filed by BellSouth Telecommunications, Inc. (the "BellSouth Petition"),[6] the focus of the Petition is on the narrow pricing areas identified, which Qwest argues require expedited relief.

The Nebraska Companies have reviewed the redacted Petition filed by Qwest on November 10, 2004. Since the Nebraska Companies have not reviewed the non-redacted, confidential version of the Petition, the Nebraska Companies are not in a position to comment as to whether Qwest has market power such that it is a dominant carrier. However, the Nebraska Companies believe that if Commission finds the number of competitive broadband service providers and the market share of such providers to be sufficient so that Qwest is not the dominant carrier in the markets it serves, it may be appropriate to grant Qwest's request. This is especially true as it applies to dominant carrier tariff regulation and resale at an avoided cost discount. However, the Nebraska Companies oppose the removal of all common carrier regulation, as requested in the BellSouth Petition and supported by Qwest. The Nebraska Companies will use these comments to explain why they believe that granting Qwest's request may be appropriate, but granting the broader relief sought by BellSouth in its petition would have a harmful effect on the pricing of broadband services and therefore on consumers.

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[5] *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Universal Service Obligations of Broadband Providers*, and *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, FCC 02-42 (*"Wireline Broadband NPRM"*) (rel. Feb. 15, 2002). *See Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services,* CC Docket No. 01-377, Notice of Proposed Rulemaking, FCC 01-360 (rel. Dec 20, 2001).

[6] *See Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Title II Common-Carriage Requirements*, WC Docket No. 04-405, Petition for Forbearance (filed Oct. 27, 2004).

II. If The Commission Finds That Qwest Is Non-Dominant In The Markets It Serves, Qwest's Request Would Meet The Statutory Requirements For Forbearance

<u>Enforcement of Dominant Carrier Tariff Regulation May Not Be Necessary To Ensure That The Charges And Practices Are Just And Reasonable And Not Unjustly And Unreasonably Discriminatory.</u>

Unlike the petition of BellSouth in which it requests that all ILECs providing broadband transmission services receive forbearance from all Title II common carriage regulation,[7] Qwest seeks in its petition forbearance from dominant carrier tariff regulation, in particular, 15-day tariff notices, the cost support requirement, and the required delays between price changes.[8] Qwest argues that competition, where it exists, will ensure fair and reasonable prices.[9] As the Nebraska Companies discussed in their comments on the BellSouth Petition, the mere presence of more than one provider of a service in a market does not constitute competition that would result in just and reasonable prices.[10] Therefore, the Nebraska Companies do not believe that there is sufficient competition in the broadband transmission services market to ensure just and reasonable prices. However, the Nebraska Companies believe that the reason offered by Qwest that dominant carrier tariff restrictions are not necessary to protect consumers, that is, that consumers will still have the protections found in the remaining tariff regulations and the complaint processes, will ensure that prices are just and reasonable. As long as carriers are subject to common carrier regulation, the complaint process can be used to check abuses in

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[7] Id. at p. 1.

[8] See Qwest Petition at p. 3.

[9] Id. at p. 14.

[10] *See The Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Title II Common-Carriage Requirements,* WC Docket No. 04-405, Comments of the Nebraska Rural Independent Companies (*"Nebraska Companies' Comments"*) (filed Dec. 20, 2004) at pp. 2-5.

pricing. The removal of common carrier regulation requested by BellSouth would eliminate all such protection, and should not be granted by the Commission.

Another important difference between the request for forbearance in the Qwest Petition and the BellSouth Petition is the impact that granting the petitions would have on other ILECs offering broadband transmission services. The Qwest Petition, which would maintain common carrier regulation over ILEC broadband transmission services if the Petition were granted, would not have the disastrous effects on other ILECs and their pricing that the request to eliminate common carrier regulation made by BellSouth would have. As the Nebraska Companies indicated in their comments on the BellSouth Petition, the elimination of Title II regulation from wireline broadband transmission service would require all carriers offering such service to move a portion of their investment and expenses to provide broadband service to a deregulated category.[11] Such an allocation would have a devastating effect on rural LECs, such as the Nebraska Companies and their customers in high cost areas. Rural LECs would be forced to reallocate a portion of the local loop and loop-related expenses to a deregulated category making it difficult, if not impossible for a rural, high cost companies to recover their network costs.

The allocation of loop costs to a deregulated category would reduce any high-cost universal service support a company would receive, as the allocated cost would decrease. While the universal service support received by rural, high-cost carriers would decrease due to this allocation, it is unlikely that such carriers would receive an amount equal to the decrease in support through wireline broadband service revenues. In fact, an allocation of loop costs to wireline broadband service would necessitate an increase in the rate for this service. A rate increase would in turn decrease demand for the service, lowering overall revenues received to

[11] Id. at p. 8.

maintain loop plant and pay loop-related expenses. Therefore, the only alternative many rural, high-cost companies would have to recover their loop investment and expenses would be to raise basic local exchange rates. This would not result in just and reasonable rates for customers in rural, high-cost areas. It would also violate Section 254(b)(3) of the Act, which requires that rates in rural areas be reasonably comparable to rates for similar services offered in urban areas.

Therefore, granting forbearance from dominant carrier regulation as requested in the Qwest Petition would allow rural ILECs to continue charging just and reasonable rates for their services, as such services would continue to be regulated, whereas eliminating common carrier regulation on ILEC broadband transmission services, as requested by BellSouth, would not.

<u>Dominant Carrier Tariff Restrictions May Not Be Necessary To Protect Consumers.</u>

As Qwest points out in its Petition, the filing of a tariff by Qwest for broadband transmission services would allow consumers protections found in the complaint processes. Therefore, consumers would still be afforded protection against unjust and unreasonable rates.

<u>Forbearance From Dominant Carrier Tariff Regulation May Be Consistent With The Public Interest.</u>

The Nebraska Companies believe that it may be in the public interest to forbear from dominant carrier tariff restrictions such as the 15-day notice period for a price increase, the 30-day waiting period for price changes, and the cost study requirements, provided Qwest is found to be non-dominant in the provision of broadband transmission services by the Commission. Such requirements are not necessary if a carrier does not dominate the market.

Once again, the Nebraska Companies wish to address the important differences between the limited request of Qwest in its Petition and the more far-reaching implications of the BellSouth Petition, in which BellSouth requested forbearance from all Title II common carriage requirements. Lifting dominant carrier tariff regulation for Qwest will not change the fact that end users can purchase DSL service and choose any one of over 400 ISPs that purchase Qwest's DSL Host Product.[12] However, lifting all common carrier regulation as requested by BellSouth could limit independent ISPs' access to BellSouth's network or for that matter, access to the network of any LEC affected by an affirmative Commission ruling in the BellSouth Petition. As the Nebraska Companies indicated in their comments on the BellSouth Petition, limiting access to broadband transmission by multiple ISPs is not consistent with the public interest, as it would limit innovation.[13]

In the information services market, independent ISPs have played a crucial entrepreneurial role[14] in producing the "vibrant and competitive free market that presently exists for the Internet"[15] the Commission correctly seeks to preserve.[16] If the Commission were to ignore the vital role independent ISPs play in meeting consumer demand for information services, and were to eliminate their ability to freely deliver such services to consumers via wireline facilities, not only would it run counter to Congressional intent and the legal principle of open access to essential facilities, but it would be violating one of its own goals. Therefore, while granting Qwest's limited request for forbearance from dominant carrier tariff regulation may be in the public interest, the Nebraska Companies believe that the removal of all common carrier regulation from ILEC broadband transmission services could limit innovation and would not be in the public interest.

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[12] See Petition at p. 3.

[13] *See Nebraska Companies' Comments* at pp. 9-11.

[14] *See* CFA: Administration's Broadband Policy Would Strangle ISPs, Destroy Competitive Internet Marketplace; available at http://www.consumerfed.org/070102_broadband_release.html

[15] 47 U.S.C. § 230 (b)(2).

[16] *See Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, *Internet Over Cable Declaratory Ruling*, and *Appropriate Regulatory Treatment for Broadband Access to the*

III. Conclusion

The Nebraska Companies believe that it may be appropriate to grant Qwest's request for forbearance, if the Commission determines that Qwest is non-dominant in the provision of broadband transmission services in Qwest's service areas. Given that the data concerning Qwest's market share for broadband transmission services is confidential, the Nebraska Companies do not offer a recommendation as to whether Qwest is the dominant provider of such services in its service areas.

If the Commission determines that Qwest is not the dominant provider of broadband transmission services in the markets it serves, the granting of Qwest's petition would appear to meet the statutory tests for forbearance.[17] However, the Nebraska Companies do not join Qwest in its support of the BellSouth Petition, and have indicated throughout these comments the differences between the two petitions that may make granting the Qwest request for forbearance appropriate, while the BellSouth Petition fails to meet the statutory tests for forbearance.

Internet Over Cable Facilities, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 02-77 (rel. Mar. 15, 2002) at para. 4.

[17] *See* 47 U.S.C. § 160(a).

Dated: January 5, 2005.

Respectfully submitted,

The Nebraska Rural Independent Companies

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telco, Inc.,
Consolidated Telecom, Inc.,
Consolidated Telephone Company,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Company, Inc.,
K&M Telephone Company, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Co.,
Rock County Telephone Company,
Stanton Telephone Co., Inc. and
Three River Telco

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